

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

United States,
Plaintiff
v.
David Reyes-Zepeda,
Defendant

2:13-cr-00078-JAD-VCF

Order Denying Motion for Sentence Reduction

[ECF 50]

10 On November 25, 2013, I sentenced David Reyes-Zepeda to the mandatory statutory
11 minimum term of 60 months in prison after he pleaded guilty to one count of possession of a firearm
12 during a crime of drug trafficking.¹ Reyes-Zepeda, now pro se,² moves for a sentence reduction
13 under 18 USC § 3582(c)(2), which authorizes a district court to modify an imposed sentence “in the
14 case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range
15 that has subsequently been lowered by the Sentencing Commission . . .”

16 A sentence reduction under § 3582(c)(2) requires a two-step inquiry.³ First, the court must
17 determine if the guideline for the defendant's offense was lowered post-sentencing. If so, the court
18 must then determine whether a reduction is warranted by the § 3553(a) sentencing factors.⁴ Reyes-
19 Zepeda argues that he is entitled to a reduction based on Amendment 782 to the United States
20 Sentencing Guidelines, which became effective almost one year after Reyes-Zepeda was sentenced

1 ECF 48.

² The federal public defender's office successfully moved to withdraw as Reyes-Zepeda's attorney after indicating that it would not be filing a motion or application to reduce sentence on his behalf. ECF 53, 54.

²⁷ ³ *United States v. Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013).

28 | ⁴ Id

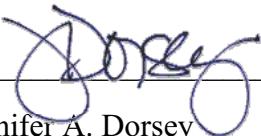
1 and applies retroactively to previously sentenced defendants.⁵ Amendment 782 reduced by two
2 levels some, but not all, of the base offense levels in the Drug Quantity Tables in U.S.S.G. §§ 2D1.1
3 and 2D1.11.

4 Reyes-Zepeda is not eligible for a sentence reduction because Amendment 782 did not affect
5 his sentencing range.⁶ I sentenced Reyes-Zepeda to the mandatory minimum term of 60 months in
6 prison for the gun charge, and all other charges against him were dismissed.⁷ Because Amendment
7 782 did not revise Reyes-Zepeda's statutory mandatory minimum guideline, he would receive the
8 same mandatory five-year term even if he were sentenced post-amendment, so he is not eligible for a
9 sentence reduction.⁸ Because Reyes-Zepeda is not eligible for a sentence reduction, I need not
10 consider whether the § 3553 sentencing factors warrant that relief.

11 **Conclusion**

12 Accordingly, IT IS HEREBY ORDERED that defendant's motion for a sentence reduction
13 [ECF 50] is DENIED.

14 Dated April 4, 2016

15 
16 Jennifer A. Dorsey
17 United States District Judge

22 ⁵ U.S.S.G. §§ 1B1.10(d), (e)(1).

23 ⁶ See 18 U.S.C. § 924(c)(1)(A)(I) (still requiring a mandatory minimum term of five years'
24 imprisonment).

25 ⁷ ECF 48.

26 ⁸ District courts have "no authority to reduce a sentence" under 18 U.S.C. § 3582(c)(2) when the
27 defendant is sentenced to the statutory mandatory minimum and that mandatory minimum is not
28 affected by an amendment to the Sentencing Guidelines. *United States v. Paulk*, 569 F.3d 1094,
1095 (9th Cir. 2009).